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OGC Has Reviewed

2 October 1957

MEMORANDUM FOR: General Counsel

SUBJECT : Government Owned Corporations

1. You have inquired as to the law regarding Government owned corporations.

2. The governing legislation is the Government Corporation Control Act, 31 USCA 841-871, 59 Stat. 597, December 6, 1945. The most enlightening background material with respect to this Act is contained in 1945 US Code Cong. Service, page 887 et seq. which contains Senate Report No. 694 of November 2, 1945. It is pointed out that although it was settled early in the history of the nation that a Government corporation is a constitutional means of carrying into effect legitimate powers of the Federal Government, little use was made of this type of organization prior to World War I. Subsequent to the Budget and Accounting Act of 1921 the United States passed through the economic emergency periods of the 1930's, the defense and war period of the 40's and the Korean War period. Each of these periods contributed a large number of Government corporations. Prior to the enactment of the Government Corporation Control Act the degree and character of control exercised over Government corporations by the Congress, the President, and the established fiscal agencies of the Government have varied greatly and without any real basis.

3. The purpose of the Act is to provide effective control by the Congress of Government corporations through submission of business-type budgets and being subject to commercial-type audits. Thus each wholly owned corporation is required by the Act to prepare annually a business-type budget to the President (Bureau of the Budget) including a statement of financial condition, a statement of income and expense, an analysis of surplus or deficit, a statement of sources and application of funds, and such other supplementary statements and information as are necessary or desirable to make known the financial condition and operations of the corporation. Such statements shall include estimates of operations by major types of activities, together with estimates of administrative expenses, estimates of borrowings, and estimates of the amount of Government capital funds which shall be returned to the Treasury during the fiscal year or the appropriations required to provide for the restoration of capital impairments. (31 USCA 847). The Act further provides that the Budget programs transmitted by the President to the Congress shall be considered, and legislation enacted making necessary appropriations, as may be authorized by law, making available for expenditure for operating and administrative expenses such corporate funds or other

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financial resources or limiting the use thereof as the Congress may determine and providing for repayment of capital funds and the payment of dividends. (31 USCA 849). In addition there is set forth the requirement for audit by the General Accounting Office under rules and regulations prescribed by the Comptroller General and for a report by him to the Congress by 15 January for the preceeding fiscal year. (31 USCA 850 and 851).

4. The sale or purchase of any direct or guaranteed obligations of the United States in excess of \$100,000 is prohibited except by approval or waiver of the Secretary of the Treasury who may waive the requirement as to any transaction or classes of transactions. The Secretary is authorized to exercise this function through any officer or employee of any Federal agency whom he may designate, with the concurrence of the head of the Agency. (31 USCA 868 (b) and (c)).

5. It is additionally provided that no corporation shall be created, organized, or acquired on or after December 6, 1945, by any officer or agency of the Federal Government or by any Government corporation for the purpose of acting as an agency or instrumentality of the United States, except by Act of Congress or pursuant to an Act of Congress specifically authorizing such action. (31 USCA 869 (a)).

6. Senate Report No. 694, previously referred to, contains the following:

"An intelligent review of the programs of the Government corporations requires comprehensive information of their past operations and future plans. Obtaining the necessary information on past operations should present no serious problems, but accurate forecasts will be extremely difficult or impossible for many programs. Both the corporations and the Director of the Bureau of the Budget pointed out at the hearings that many of the operations of the corporations are subject to the ebb and flow of economic conditions and to a multitude of factors beyond their control or their ability to foresee. The committee recognizes the uncertainties and difficulties of forecasting, but it considers these programs too important to be ignored in formulating the Federal budget program. ...

"An important provision of the bill is the requirement that the budget programs shall include due allowance for the need for flexibility, including provision for emergencies and contingencies, so that the Corporation may properly carry out its activities as authorized by law. The corporate form of organization is a useful device for carrying out a variety of Government services and programs, of a continuing as well as an emergency character. It is generally agreed that the corporate form loses much of its peculiar value without reasonable autonomy and flexibility in its day-to-day decisions and operations. The budget and financial controls imposed upon the Government corporations should not deprive them of this freedom and flexibility in carrying out author-

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ized programs to a greater extent than is necessary to conform their operations to the program of the Government and the will of Congress.

"Discretion is necessary in the choice of activities on which fiscal-year limitations are appropriate and in the type of limitations imposed. There may be mandatory programs on which no specific dollar limitations should be imposed. There will be other programs, subject to unpredictable factors, where it may be desirable to establish limitations that would prevent an extreme expansion of the present volume of operations without further consideration by Congress but that would be high enough to permit the corporations to adapt the programs to reasonable changes in conditions."

7. It would appear from the foregoing that the philosophy of the Act is one of liberality as regards the purpose and function of overt Government controlled corporations. It is felt that this organization may well use this as a policy justification in connection with its use of wholly owned corporations and particularly in the light of the extraordinary powers granted by the Congress. Our wholly owned corporations are perhaps even more susceptible to the vagaries of changing conditions than are those envisioned by the Congress in connection with the Act under discussion. We are not bound to seek permission of the Congress in acquiring or creating a wholly owned corporation, to submit to audit by the General Accounting Office, nor to submit budgets to the Bureau of the Budget, be it a simple funding mechanism or a complicated going business concern.

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8. In summary it is felt that the expressed Congressional policy behind the Government Corporation Control Act considered with the extraordinary powers given this organization by Congress provide ample authority for our use of wide latitude in the field of wholly owned corporations, and indeed ample justification for presentation to those who may wish to attempt criticism of any of our excursions into this field.

9. There are no cases relating to the Government Corporation Control Act reported in USCA and those few reported decisions of the Comptroller General pertain to the mechanics of the Act itself such as the appropriate means of carrying out the audit function or relate to the interpretation of specific provisions of other Congressional Acts.

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Assistant General Counsel

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Subject

Proprietary Investments

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